

FCC MAIL SECTION

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
 Washington, D.C. 20554

MAY 20 9 27 AM '98

In the Matter of )  
 )  
 Local Exchange Carriers' )  
 Rates, Terms, and Conditions )  
 for Expanded Interconnection )  
 Through Virtual Collocation )  
 for Special Access and Switched Transport )  
 )  
 Southwestern Bell Telephone Company, )  
 Tariff F.C.C. No. 73, )  
 Application for Review )

DISPATCHED BY  
 CC Docket No. 94-97

Transmittal No. 2524

**ORDER**

Adopted: May 13, 1998

Released: May 15, 1998

By the Commission:

**I. Introduction**

1. On December 14, 1995, Southwestern Bell Telephone Company (SWB) sought confidential treatment of data filed with Transmittal No. 2524 in the virtual collocation proceeding, CC Docket No. 94-97. In the *SWB Transmittal No. 2524 Suspension Order*, the Tariff Division of the Common Carrier Bureau (Bureau) concluded that confidential cost support submitted by SWB with Transmittal No. 2524 should not be disclosed to any party.<sup>1</sup> In this Order, we grant in part and deny in part an application for review filed by MCI Telecommunications Corporation (MCI) of the Bureau's *SWB Transmittal No. 2524 Suspension Order*.

**II. Background**

2. On July 25, 1994, the Commission directed Tier 1 Local Exchange Carriers (LECs), other than National Exchange Carrier Association pool members, to provide expanded interconnection for interstate special access and switched transport services through generally available virtual collocation arrangements.<sup>2</sup> Expanded interconnection is a LEC offering that

<sup>1</sup> *Southwestern Bell Telephone Company, Tariff F.C.C. No. 73, Transmittal No. 2524, Order*, 11 FCC Rcd 11500 (Tariff Div. Com. Car. Bur. 1996) (*SWB Transmittal No. 2524 Suspension Order*).

<sup>2</sup> See *Expanded Interconnection with Local Telephone Company Facilities*, CC Docket No. 91-141, Memorandum Opinion and Order, 9 FCC Rcd 5154, 5156 (1994) (*Virtual Collocation Order*). We note that several LECs sought review of the *Virtual Collocation Order* before the U.S. Court of Appeals for the District of

enables parties, by interconnecting their circuits with those of the LEC at a central office through either physical or virtual collocation arrangements, to compete on a facilities basis with certain LEC access services, such as DS1 and DS3 service.<sup>3</sup> In a virtual collocation arrangement, the LEC owns or leases the transmission equipment in the central office that terminates the interconnector's circuits. The LEC dedicates this equipment to the exclusive use of the interconnector, and provides installation, maintenance, and repair services on a nondiscriminatory basis.<sup>4</sup> On September 1, 1994, LECs subject to the requirements of the *Virtual Collocation Order* filed tariffs offering virtual collocation service. On December 9, 1994, the Bureau suspended in part, and initiated an investigation into the lawfulness of, the LECs' virtual collocation tariffs in CC Docket No. 94-97.<sup>5</sup>

3. On December 14, 1995, SWB filed Transmittal No. 2524, which proposed to revise certain existing virtual collocation rates, and filed a request for confidential treatment of certain cost support accompanying that transmittal. The data for which SWB seeks confidential treatment are cost information related to interconnector-designated equipment (IDE) for virtual collocation service. On April 4, 1996, the Tariff Division of the Bureau released the *SWB Transmittal No. 2524 Suspension Order*, which found that, in the case of the Transmittal No. 2524 data for which SWB requested confidential treatment, there was good cause to waive the Commission's rules providing that materials filed in support of tariff revisions are to be publicly available.<sup>6</sup> Accordingly, the *SWB Transmittal No. 2524 Suspension Order* granted confidential treatment of the data at issue. On May 6, 1996, MCI filed an application for review of the Bureau's *SWB Transmittal No. 2524 Suspension Order*.<sup>7</sup> SWB filed an opposition to MCI's application for review, and MCI filed a reply.<sup>8</sup>

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Columbia Circuit (D.C. Circuit) in Docket Nos. 94-1547, 94-1548, and 94-1612. The LECs argued that the Commission lacked statutory authority to order LECs to provide virtual collocation. The court did not review the case on the merits, but rather remanded the case to the Commission for reconsideration of the *Virtual Collocation Order*, in light of 47 U.S.C. §§ 251(c)(6) & (g), as applied after the date of enactment of the Telecommunications Act of 1996. See *Pacific Bell v. FCC*, Docket Nos. 94-1547, 94-1548 and 94-1612, slip. op. (D.C. Cir. March 22, 1996). The remand is still pending before the Commission.

<sup>3</sup> *Virtual Collocation Order*, 9 FCC Rcd at 5158. DS1 service provides capacity equivalent to 1.544 Megabits per second, and DS3 service provides capacity equivalent to 28 DS1 circuits.

<sup>4</sup> *Virtual Collocation Order*, 9 FCC Rcd at 5158.

<sup>5</sup> *Ameritech Operating Companies, et al.*, CC Docket No. 94-97, Order, 10 FCC Rcd 1960 (Com. Car. Bur. 1994) (*Virtual Collocation Tariff Suspension Order*).

<sup>6</sup> *SWB Transmittal No. 2524 Suspension Order*, 11 FCC Rcd 11500. See also 47 C.F.R. §§ 0.453(j) and 0.455(b)(11).

<sup>7</sup> Application for Review filed by MCI Telecommunications Corporation, *Southwestern Bell Telephone Company*, Tariff F.C.C. No. 73, Transmittal No. 2524 (dated May 6, 1996) (MCI Application for Review).

<sup>8</sup> Opposition of Southwestern Bell Telephone Company to Application for Review, *Southwestern Bell Telephone Company*, Tariff F.C.C. No. 73, Transmittal No. 2524 (dated May 21, 1996) (SWB Opposition); Reply filed by MCI Telecommunications Corporation, *Southwestern Bell Telephone Company*, Tariff F.C.C. No. 73, Transmittal No. 2524 (dated May 31, 1996) (MCI Reply).

4. SWB has also filed similar requests for confidential treatment of cost support data submitted with a number of other transmittals and pleadings in the virtual collocation proceeding in CC Docket No. 94-97. In June 1997, the Commission ruled on those requests accompanying SWB Transmittal No. 2382 and 2382-Amended in the *SWB Application for Review Order*.<sup>9</sup> In that Order, the Commission determined that itemized equipment and overhead costs submitted by SWB with Transmittal Nos. 2382 and 2382-Amended are exempt from mandatory public disclosure under Exemption 4 of the Freedom of Information Act (FOIA), 5 U.S.C. § 552(b)(4).<sup>10</sup> The Commission found, however, that FOIA does not bar the disclosure of information, even when the information falls within the scope of a particular FOIA exemption.<sup>11</sup> The Commission explained that, despite our finding that the information qualifies under Exemption 4 of FOIA, we still have the authority to make the information available pursuant to a protective order if we conclude that such disclosure is in the public interest. In undertaking the public interest evaluation, the Commission noted that SWB's virtual collocation tariff had been set for investigation and that disclosure of the detailed cost information at issue would assist the Commission in exercising its responsibility, under Section 204 of the Communications Act, to assess the reasonableness of the expanded interconnection rates.<sup>12</sup> The Commission concluded that disclosure pursuant to a protective order best served the public interest by providing adequate protection of the confidential material while allowing maximum participation by interested parties. Accordingly, the Commission adopted a protective order to govern the release of the confidential data submitted by SWB with Transmittal Nos. 2382 and 2382-Amended.<sup>13</sup>

### III. Discussion

5. In its application for review, MCI argues that the Commission should reverse the Bureau's decision in the *SWB Transmittal No. 2524 Suspension Order* because the Bureau failed to explain clearly its decision to grant confidential treatment of certain data filed with Transmittal No. 2524<sup>14</sup> and SWB failed to demonstrate that public release of the data would result in competitive harm to SWB.<sup>15</sup> We agree with MCI's contention that the Bureau failed to explain clearly its decision to grant confidential treatment of certain cost support data filed with Transmittal No. 2524. Nevertheless, we find that SWB has demonstrated a likelihood

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<sup>9</sup> *Southwestern Bell Telephone Company, on Requests for Inspection of Records*, FOIA Control Nos. 94-310, 325, 328, Memorandum Opinion and Order, 12 FCC Rcd 7770 (1997) (*SWB Application for Review Order*).

<sup>10</sup> Exemption 4 of FOIA protects "confidential" commercial and financial information. See 5 U.S.C. § 552(b)(4).

<sup>11</sup> *SWB Application for Review Order*, 12 FCC Rcd at 7771-72.

<sup>12</sup> *SWB Application for Review Order*, 12 FCC Rcd at 7772, citing 47 U.S.C. § 204.

<sup>13</sup> *SWB Application for Review Order*, 12 FCC Rcd at 7776-84.

<sup>14</sup> MCI Application for Review at 7-8.

<sup>15</sup> See MCI Application for Review at 20, citing *SWB Transmittal No. 2524 Suspension Order*, 11 FCC Rcd 11500.

that competitive harm will result from the unconditional release of the cost support data that were filed under a request for confidential treatment with Transmittal No. 2524. Under Exemption 4 of FOIA, 5 U.S.C. § 552(b)(4), confidential financial information is exempt from mandatory public disclosure. The data for which SWB seeks confidential treatment are cost information related to interconnector-designated equipment (IDE) for virtual collocation service. These IDE costs for virtual collocation are substantially the same as equipment costs for the DS1 and DS3 access services that SWB uses to compete with interconnectors. These data provide specific details of investments, capital costs (depreciation, income taxes, cost of capital), operating expenses (maintenance and administrative expenses), and overhead costs and, as such, provide insight into SWB's business strategies with respect to DS1 and DS3 access services. Unconditional release of IDE cost data has the potential of revealing SWB's market plans and positions in the access services market and could be used by competitors to devise strategies to introduce new services to the competitor's benefit, or exploit weaknesses in SWB's existing operations. Accordingly, we conclude that the data for which SWB seeks confidential treatment qualify as confidential financial information under Exemption 4 and are exempt from mandatory public disclosure.<sup>16</sup>

6. Although we conclude that the data at issue should be withheld from disclosure on the public record, we find that a further analysis is necessary to determine whether limited disclosure is appropriate. Even when information falls within the scope of a particular FOIA exemption, the Commission still has the authority to make the materials available to parties if disclosure would best serve the public interest.<sup>17</sup> In evaluating the public interest, we note that SWB's virtual collocation tariff has been set for investigation and that comment from the parties on the detailed cost information filed with Transmittal No. 2524 would assist the Commission in exercising its responsibility, under Section 204 of the Communications Act, to assess the reasonableness of SWB's virtual collocation rates.<sup>18</sup> We therefore find it necessary to balance the need to protect proprietary information from public disclosure with the benefit of allowing parties to have access to documents that are potentially of decisional significance. We conclude that disclosure of the data at issue pursuant to a protective order best serves the public interest because it provides adequate protection of the confidential material while allowing maximum participation in this proceeding by interested parties.<sup>19</sup> Accordingly, we reverse the Bureau's decision in the *SWB Transmittal No. 2524 Suspension Order* insofar as it fails to permit limited disclosure of the data at issue pursuant to a protective order.

7. MCI argues that the Bureau's order is inconsistent with "the Commission's intent. . . for all interested parties to have unfettered access to cost support information filed

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<sup>16</sup> 5 U.S.C. § 552(b)(4). See also *National Parks and Conservation Ass'n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974).

<sup>17</sup> See *SWB Application for Review Order*, 12 FCC Rcd at 7771-72.

<sup>18</sup> See 47 U.S.C. § 204. See also *SWB Application for Review Order*, 12 FCC Rcd at 7772.

<sup>19</sup> See *SWB Application for Review Order*, 12 FCC Rcd at 7772; *Implementation of Section 402(b)(1)(A) of the Telecommunications Act of 1996*, Report and Order, 12 FCC Rcd 2170, 2212-13 (1997) (*Streamlined Tariff Review Order*).

in support of LEC tariffed rates."<sup>20</sup> We find that while it is important for interested parties to have access to any cost information a carrier files to support tariffed rates, there is no requirement that the data be unconditionally released in cases where such data are competitively sensitive. When cost support data are competitively sensitive, protective orders can be used to ensure participation by interested parties in tariff proceedings while protecting the information from release to the public. The *Streamlined Tariff Review Order* notes that the Commission has "used protective orders in a variety of proceedings to protect competitively sensitive material from public disclosure while allowing interested parties to have access to potentially decisional documents."<sup>21</sup>

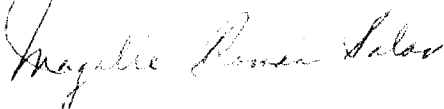
8. Accordingly, we adopt the protective order issued with the *SWB Application for Review Order*, attached hereto as Appendix A, to govern the release of the confidential data submitted with SWB Transmittal No. 2524. Any party wishing to view these data must first sign the declaration contained in Appendix A, thereby agreeing to the terms of this protective order. Parties may file comments on these data in accordance with the schedule established in an Order to be issued by the Bureau addressing SWB's other pending confidentiality requests.

#### IV. Ordering Clauses

9. **IT IS ORDERED** that the Application for Review filed by MCI Telecommunications Corporation of the Bureau's *SWB Transmittal No. 2524 Suspension Order* **IS GRANTED IN PART AND DENIED IN PART**.

10. **IT IS FURTHER ORDERED** that the Protective Order and Declaration, attached hereto as Appendix A, **IS ADOPTED** to govern the release of the confidential data submitted by Southwestern Bell Telephone Company with Transmittal No. 2524.

FEDERAL COMMUNICATIONS COMMISSION



Magalie Roman Salas  
Secretary

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<sup>20</sup> MCI Application for Review at 14-16, citing *Expanded Interconnection with Local Telephone Company Facilities*, CC Docket No. 91-141, Transport Phase I, Second Report and Order and Third Notice of Proposed Rulemaking, 8 FCC Rcd 7374, 7435-36 (1993) (*Switched Transport Expanded Interconnection Order*).

<sup>21</sup> *Streamlined Tariff Review Order*, 12 FCC Rcd at 2212-13.

## APPENDIX A

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of	)	
	)	
Local Exchange Carriers'	)	CC Docket No. 94-97
Rates, Terms, and Conditions	)	
for Expanded Interconnection	)	
Through Virtual Collocation	)	
for Special Access and Switched Transport	)	
	)	
Southwestern Bell Telephone Company,	)	
Cost Support Filed under Request for	)	
Confidential Treatment	)	

### **Protective Order**

1. On this date, the Commission is adopting both this protective order and an order denying in part and granting in part the application for review of the Bureau's *SWB Transmittal No. 2524 Suspension Order* filed by MCI Telecommunications Corporation. The Commission is also ruling that the confidential data submitted by SWB with Transmittal No. 2524 must be disclosed, pursuant to this protective order, to all parties to the virtual collocation tariff review proceeding for the sole purpose of permitting participation in this proceeding, including any appeals.

### Definitions

2. The term "party" as used in this Protective Order means any entity that is participating in Federal Communications Commission (Commission) CC Docket No. 94-97 and is seeking access to confidential information, as defined below.

3. For purposes of this Order, "Confidential Information" shall include: (i) information submitted to the Commission by the producing party that has been so designated by the producing party and that the producing party has determined in good faith constitutes trade secrets and commercial or financial information that is privileged or confidential within the meaning of Exemption 4 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4), and (ii) information submitted to the Commission by the producing party that has been so designated by the producing party and that the producing party has determined in good faith falls within the terms of Commission orders in this proceeding designating items for treatment as confidential. Confidential Information shall also include information specifically designated by the Commission in this proceeding as confidential. The Commission may, *sua sponte* or upon petition, determine that all or part of the information claimed by the producing party as "Confidential Information" is not entitled to such treatment.

### Procedure

4. In filings made in this docket, SWB, the producing party, may designate certain documents and information it produces as "Confidential Information" consistent with the definition of that term in this Protective Order. All such documents and information shall be clearly labeled by SWB to show that the documents are considered "Confidential."

5. Personnel. (a) Counsel. All Confidential Information produced pursuant to this Protective Order shall be made available to parties solely through counsel for the parties, including in-house counsel, or persons working under the supervision of counsel within the following categories:

(1) Attorneys, including in-house counsel, actively engaged in the conduct of this proceeding, secretaries, paralegal assistants, and employees of such an attorney to the extent reasonably necessary to assist in the review of tariff support materials and the preparation of documents in the proceeding, and

(2) Any persons requested by counsel of record to furnish technical or other expert services, or otherwise to prepare material for the proceeding, except:

(a) Disclosure shall be prohibited, subject to the limited exception set out in paragraph 5(b) below for deposition witnesses and outside consultants and experts, to persons now engaged, or who reasonably expect they will be engaged, in the purchase of similar or identical equipment, or equipment substitutable in whole or in part for the equipment the prices of which are contained in the cost support data.

(b) For any such person who is in a position to use the information for competitive, commercial, or business purposes, other than those governed by subparagraph (a), disclosure shall be limited to the minimum extent necessary to obtain analysis and management guidelines for participation in this proceeding. In addition, disclosure shall be permitted only upon sworn certification by counsel requesting such disclosure that he or she has used his or her best efforts to obtain personnel who are not in a position to use the information for competitive, commercial or business purposes, and that such personnel do not exist.

(b) Depositions. In the event the Commission orders that depositions may be taken, disclosure is permitted to persons noticed for depositions or designated as witnesses to the extent reasonably necessary to prepare testimony or to outside consultants or experts retained for the purpose of assisting counsel prepare testimony for such depositions. If such persons include those described in paragraph 5(a)(2)(a) above, then disclosure is permitted only upon sworn certification by counsel requesting such disclosure that he or she has used his or her best efforts to identify personnel with the same or substantially similar knowledge who are not now engaged, or who reasonably expect they will not be engaged, in the purchase of similar or identical equipment, or equipment substitutable in whole or in part for the equipment the prices of which are contained in the cost support data and that such personnel do not exist.

(c) Personnel eligible to have access to Confidential Information pursuant to paragraphs 5(a) or (b) shall not be entitled to review any Confidential Information unless and until they sign Attachment A which states that they shall abide by the terms of the Protective Order.

6. Before a party, through counsel, discloses SWB's virtual collocation cost support data to any person listed in subparts (a) and (b) of paragraph 5(a)(2) who is a competitor (or any employee of, or consultant to, a competitor) of any equipment vendor the prices of which are contained in SWB's virtual collocation cost support data, the party shall give at least ten working days' advance notice in writing (initially via facsimile followed by first class mail, postage prepaid) to counsel for any equipment vendor the data of which are to be disclosed, stating the name and address of the person[s] to whom disclosure is to be made and stating the purpose of such disclosure. The facsimile numbers and addresses to be used for notice to the counsel for the equipment vendors are listed in Attachment B. Copies of the notice should be served on the Commission and all parties of record. If, within the ten-day period, a motion is filed objecting to the proposed disclosure, disclosure may not occur until the Commission has denied such motion and all appeals of the Commission denial of such

motion are exhausted.

7. Prior to giving access to Confidential Information, as contemplated in Paragraphs 4-6 above, to any person authorized to be given access pursuant to this Order, counsel for the party seeking review of the Confidential Information shall deliver a copy of this Protective Order to such persons, and prior to disclosure, each such person shall agree in writing to comply with and be bound by this Protective Order in the form of Exhibit A, attached hereto. Said counsel shall, at the time of the review of such Confidential Information, or as soon thereafter as practical, deliver to counsel for the party producing the Confidential Information a copy of Attachment A as executed, which shall show each signatory's full name, permanent address and employer, and the party with whom the signatory is associated.

8. Any party producing Confidential Information pursuant to this Order shall designate a Washington, D.C. location at which all parties shall be permitted access to and review of requested Confidential Information pursuant to the other terms of this Order. Any such access and review shall be limited to regular business hours after reasonable notice by the requesting party.

9. After reasonable request, two copies of information designated by the producing party as Confidential Information will be delivered to the party that requested the information, unless that information is voluminous. Unless otherwise ordered, voluminous information shall mean information of 300 pages or more. The two copies of the Confidential Information shall be provided to the requesting party's counsel of record who has agreed in writing to be bound by this Protective Order. Voluminous information designated as Confidential Information may be reviewed at the producing party's designated Washington, D.C. location. In addition, for voluminous information, the viewing party may request that two copies of some or all of the information be made at its expense, and be removed from the producing party's premises subject to all the other conditions in this Protective Order.

10. The copies are to be made by, or under the supervision of, the personnel of the party who produced such document, who will affix a stamp to each item to be copied denoting the Confidential designation of the item. The stamp shall be affixed in such a manner that the text of the Confidential Information is not obscured on either the original or any copies thereof.

11. The information produced shall be organized in a manner that clearly identifies each document or portion thereof that is claimed to be Confidential. SWB, the producing party, shall be responsible for producing the Confidential Information in a sealed envelope that is clearly marked on the outside as containing Confidential Information and that clearly specifies the numbers of pages contained therein.

12. Counsel of record for the party authorized hereunder who requested the copies shall sign a statement in the form of Attachment C attached hereto verifying that the sealed envelope clearly marked as containing Confidential Information has been received and designating the name and address of the individual into whose custody the copies shall be delivered. The designated representative of the producing party shall also sign Attachment C and verify to whom the sealed envelope was delivered. Access to said copies shall be limited to those persons defined in Paragraph 5 of this Order. No additional copies shall be made, unless the parties agree otherwise, or upon a showing of a good cause the Commission directs otherwise.

13. Persons that have agreed in writing to be bound by this Protective Order and are therefore permitted access to Confidential Information by this Order may take notes regarding such information as may be necessary in connection with this proceeding. Such notes shall be treated in the same manner as the Confidential Information from which the notes were taken.



### Storage at the Commission

14. Confidential Information, including that portion of testimony containing references thereto, if filed with the Commission, shall clearly be labeled as Confidential and filed under seal, and shall be segregated in the files of the Commission, and shall be withheld from inspection by any person not bound by the terms of this Protective Order, unless such Confidential Information is released from the restrictions of this Order either through agreement of the parties, or, after notice to the parties and hearing, pursuant to the order of the Commission Staff, the Commission, or a court.

### Good Faith Use of Material

15. All persons having access to the confidential data shall use their best efforts to keep the Confidential Information secure in accordance with the purposes and intent of this Protective Order. To this end, persons having custody of any Confidential Information shall keep the documents properly secured during all times when the documents are not being reviewed by a person authorized to do so.

16. As obtained pursuant to this Order, Confidential Information shall be used exclusively for purposes of participating in this proceeding, including any appeals, and shall not be used or disclosed for any other purpose. The limitation on the use or disclosure of Confidential Information shall be construed to prohibit disclosure orally or in writing or through reproduction or by any other means to anyone not designated under paragraph 5 of all information contained therein. The limitation shall also be construed to prohibit making decisions, participating in any decision making process or rendering advice, legal or otherwise, wherein any information or knowledge derived from said information is used in any manner other than for purposes of this proceeding.

17. Persons obtaining access to Confidential Information under the terms of this order may disclose, describe, or discuss the Confidential Information in any pleading filed in CC Docket No. 94-97, but only if they file both a confidential version and a public version of the pleading under the following procedures:

(a) Confidential Version. (i) Any pleading that includes Confidential Information shall be filed under seal and clearly marked "Contains Confidential Information Subject to Protective Order, CC Docket No. 94-97" and covered by a separate letter citing this Order. (ii) Subject to exceptions noted in (iii) below, any pleading containing Confidential Information shall be served only upon the Commission, the producing party, and any vendor the confidential equipment prices of which are reflected in the pleading. (iii) The Confidential Version will not be served on vendors if it contains the confidential equipment prices of more than one vendor. Other parties to this Protective Order may view the Confidential Version under the terms of this Protective Order.

(b) Public Version. Any party filing a pleading that contains Confidential Information shall also prepare a separate public version in which all Confidential Information has been redacted. (i) On the same date that the Confidential Version is filed with the Commission, the party shall hand deliver the Public Version to the producing party and any vendors the equipment prices of which are included in Confidential Information and reflected in the Confidential Version. (ii) The producing party and vendors have five working days following receipt to object in writing to the filing of the Public Version. (iii) If no objections are filed, on the sixth working day following the delivery of the Public Version, the Public Version will be filed with the Commission for inclusion in the public record and will be served on all parties to the virtual collocation tariff review proceeding.

(c) Computation of time. The time for filing responses to both the public and confidential versions of the pleading shall be computed from the day after the filing of the Public Version. See 47

C.F.R. § 1.4(b) of the Commission's rules.

Returning Material to Producing Party

18. Within thirty (30) days after completion of this proceeding and judicial review, the producing party may request the return of all Confidential Information furnished under the terms of this Protective Order. The Confidential Information must be returned within thirty (30) days after the request. Notes taken with regard to Confidential Information shall be destroyed at the time that Confidential Information is returned, in the presence of the party who produced the Confidential Information if that party so requests. Confidential Information made part of the record in any proceeding shall remain in the possession of the Commission, and, unless otherwise agreed by the party that produced the information or as provided by future order, shall continue to be subject to the protective requirements of this Protective Order.

Other Rights Preserved

19. The signing of the Protective Order shall in no way constitute any waiver of the rights of any party to this protective order to contest any assertion of confidentiality or to appeal any finding that specific information is Confidential Information or should be subject to the protective requirements of this Order. The designation of any information as Confidential Information may be challenged before the Commission, or a court having jurisdiction to review a Commission determination, that said material should be so classified.

20. Disclosure of Confidential Information under this Protective Order shall not be deemed a waiver by either the producing party or the vendors the data of which are contained therein, in any other proceeding, agency, or court, of any privilege or entitlement to confidential treatment. Any parties receiving access to Confidential Information under this Order:

- (a) agree not to assert any such waiver;
- (b) agree not to use information derived from Confidential Information in any proceeding other than this one or for any purpose unrelated to other than this proceeding; and
- (c) agree that accidental disclosure of privileged information shall not be deemed a waiver of the privilege.

21. Nothing contained herein shall limit any party's right to judicial review of any decisions rendered hereunder.

22. Any failure to abide by the terms of this Protective Order may result in the imposition of sanctions, including dismissal of a party's petitions, or censure, suspension, or disbarment of the attorneys involved. See 47 C.F.R. § 1.24.

23. Authority. This Protective Order is issued pursuant to Sections 4(i) and 4(j) of the Communications Act as amended, 47 U.S.C. §§ 154(i), (j) and 47 C.F.R. § 0.457(d).

Attachment C to the Protective Order

**Statement of Receipt**

I, \_\_\_\_\_, as (COUNSEL OF RECORD) OR  
(DESIGNATED REPRESENTATIVE) of \_\_\_\_\_ (insert name of party) have received the  
sealed envelope marked "Confidential Information" for the purpose of making copies of said  
confidential information, pursuant to paragraph 12 of the Protective Order. These copies are to remain  
in the custody of:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Signed on this \_\_\_\_\_ day of \_\_\_\_\_, 1996

\_\_\_\_\_

Name: \_\_\_\_\_

Attachment A to the Protective Order

**Declaration**

In the Matter of	)	
	)	
Local Exchange Carriers'	)	CC Docket No. 94-97
Rates, Terms, and Conditions	)	
for Expanded Interconnection	)	
Through Virtual Collocation	)	
for Special Access and Switched Transport	)	
	)	
Southwestern Bell Telephone Company,	)	
Cost Support Filed under Request for	)	
Confidential Treatment	)	

I, \_\_\_\_\_, hereby declare under penalty of perjury that I have read the Protective Order that has been entered by the Commission in this proceeding, and that I agree to be bound by its terms pertaining to the treatment of Confidential Information submitted by parties to this proceeding. I understand that the Confidential Information shall not be disclosed to anyone except in accordance with the terms of the Protective Order and shall be used only for purposes of the proceedings in this matter. I acknowledge that a violation of the Protective Order is a violation of an order of the Federal Communications Commission. I acknowledge that this Protective Order is also a binding agreement with the Submitting Party.

(signed) \_\_\_\_\_

(printed name) \_\_\_\_\_

(representing) \_\_\_\_\_

(title) \_\_\_\_\_

(employer) \_\_\_\_\_

(address) \_\_\_\_\_

(phone) \_\_\_\_\_

(date) \_\_\_\_\_

Attachment B to the Protective Order

**Notification to Equipment Vendors**

Pursuant to the terms of the Protective Order entered in CC Docket No. 94-97, notice is hereby given to counsel or designated representative of an equipment vendor(s), pursuant to paragraph 6 of the Protective Order to CC Docket No. 94-97, that copies of its equipment prices contained in SWB's confidential virtual collocation cost support data have been disclosed to the person listed below pursuant to paragraph 5(a)(2) or 5(b).

**Statement of Receipt**

I, \_\_\_\_\_, as (COUNSEL OF RECORD) OR  
(DESIGNATED REPRESENTATIVE) of \_\_\_\_\_ (insert name of equipment vendor ) have  
received notice that its equipment prices, as contained in SWB's confidential virtual collocation cost  
support data, have been disclosed to:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Representing: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Facsimile No: \_\_\_\_\_

Signed on this \_\_\_\_\_ day of \_\_\_\_\_, 1996

\_\_\_\_\_  
Signature